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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,722	03/25/2004	Alex S. Gresock	GRE-001-A	8174
32226	7590	12/20/2005	EXAMINER	
NORTHERN MICHIGAN PATENT LAW, PLC 526 W. FOURTEENTH ST. #250 TRAVERSE CITY, MI 49684			MCPARTLIN, SARAH BURNHAM	
			ART UNIT	PAPER NUMBER
			3636	
DATE MAILED: 12/20/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/809,722	GRESOCK, ALEX S.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sarah B. McPartlin	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 25 November 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-19 is/are pending in the application.  
4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-16 and 19 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 25 March 2004 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/29/04.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## DETAILED ACTION

### *Priority*

1. Acknowledgement is made of applicant's claim for domestic priority based on provisional application 60/458913 filed in the United States on March 29, 2003.

### *Information Disclosure Statement*

2. The information referred to in the information disclosure statements filed on June 29, 2004 has been considered as to the merits.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "the frame" in lines 4 and 5. Claims 6, 8-10 and 15-16 also recite "the frame". It is unclear whether these recitations of "the frame" are referring to the blind frame or the vertical frame. Clarification is requested.

Claim 1 states that the vertical frame has upper and lower canopy support arms. Claim 2 states that the blind frame has a pair of upper and lower canopy support arms. It is unclear whether or not applicant is claiming two different sets of upper and lower

canopy support arms; one belonging to the vertical frame and one belonging to the blind frame as a whole. Clarification is requested.

The following words/phrases lack sufficient antecedent basis:

- the side (claim 1, lines 2-3)
- the spacing (claim 4, line 2)
- the plane (claim 8, line 2)

Claims 3, 5-7 and 11-14 are rejected as being dependent upon a rejected base claim.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-7 and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilburn (3,990,536). Wilburn discloses a tree-mountable backpack blind (A) for use by hunters and others, comprising: a blind frame (unlabeled) having a generally planar vertical frame (44)(44) capable of being secured to the side of a tree (un-illustrated) or similar vertical structure, the vertical frame (44)(44) having upper (112)(116)(112)(116) and lower (38)(38) canopy support arms extending laterally from the frame (i.e. by way of extensions (34)(34)) away from the tree and a seat (82) extending laterally (by way of supports (50)(54)) from a lower portion (unlabeled) of the frame (44)(44) away from the tree below the lower canopy support arms (38)(38); and a canopy (122)(126) supported

on the upper (112)(116)(112)(116) and lower (38)(38) canopy support arms, the canopy having an open bottom (unlabeled) with a lower edge hanging below the seat (82) as is best depicted in Figure 1.

With respect to claim 2, the lower canopy support arms (38) are spaced a greater distance apart than the upper canopy support arms (116) as is best depicted in Figure 5.

With respect to claim 3, the lower canopy support arms (38)(38) extend laterally from the vertical frame (44)(44) by way of extensions (34)(34) a greater distance than the upper canopy support arms (116).

With respect to claim 4, the canopy (122)(126) has a generally triangular front opening given that upper canopy arms(112)(116) are located more closely together than lower canopy arms (38)(38), the triangular front opening being angled rearwardly and upwardly toward the frame (44)(44) since upper canopy arms (112)(116) can be angled upwardly, thereby moving the forward edge of the upper canopy arms (112)(116) rearward toward the frame (column 5, line 66- column 6, line 5).

With respect to claim 5, the canopy (122)(126) has an upper canopy portion (122) located above the seat and defining the generally triangular front opening and a lower closable canopy portion (126) extending laterally beyond the upper canopy portion (122).

With respect to claim 6, the upper (112)(116)(112)(116) and lower (38)(38) canopy support arms are movable from their laterally extended positions (shown in

Figure 1) to storage positions (see Figures 8 and 9) generally flat against the frame (44)(44).

With respect to claim 7, the upper canopy support arms (112)(116)(112)(116) have vertically extendable portions (96) movable up and down relative to the vertical frame (44) and lateral portions (120) rotatable against and away from the vertical frame (44)(44).

With respect to claim 12, the vertical frame (44)(44) includes backpack straps (62)(62).

With respect to claim 13, the vertical frame (44)(44) includes a pack bag (128).

With respect to claim 14, the lower canopy support arms (38)(38) extend laterally away from vertical frame (44)(44) by way of extensions (34) a greater distance than the seat (82).

With respect to claim 15, the seat (82) can be moved to a storage position against the frame (44)(44) as seen in Figure 9.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilburn (3,990,536) in view of Radig (3,902,264). As disclosed above, Wilburn reveals all claimed elements with the exception of a canopy the hangs below a support frame.

Radig shows a canopy member (16) that hanged below a frame member (14).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to hang the canopy member disclosed by Wilburn below the frame member as taught by Radig. Such a modification would provide better wind protection for the seat occupant and also keep the heat within the blind.

9. Claim 19 is rejected under 35 U.S.C. 103(b) as being anticipated by Hodnett (6,510,922) in view of Wilburn (3,990,536). Hodnett discloses a tree-mountable backpack blind (2) for use by hunters and others (a) comprising: a generally vertical backpack frame (32)(32) with means (unlabeled) in the form of pivots to pivotably extend or deploy and collapse arms (10) attached to a backpack frame (32)(32) for supporting a flexible covering (5); and a means for attaching (14) the backpack frame (32)(32) to a vertical upright structure (40). Hodnett does not disclose a readily deployable and collapsible roof support means attached to the frame for supporting the flexible covering.

Wilburn discloses a readily deployable roof support means (94) attached to a frame (44)(44) for supporting a flexible covering (122).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to add the readily deployable roof support means (94) disclosed by

Wilburn. Such a modification would clearly protect the seat occupant from the rain and other weather conditions.

***Allowable Subject Matter***

10. Claims 8-11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Carlson (3,545,461) Fuhrman et al. (3,609,905); Jones, Sr. (4,951,696); Bean (5,613,512); Stavenau et al. (4,134,474); Laun (3,358,789) and De Jean (3,052,251).

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah B. McPartlin whose telephone number is 571-272-6854. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SBM  
December 13, 2005

  
**Peter M. Cuomo**  
Supervisory Patent Examiner  
Technology Center 3600